

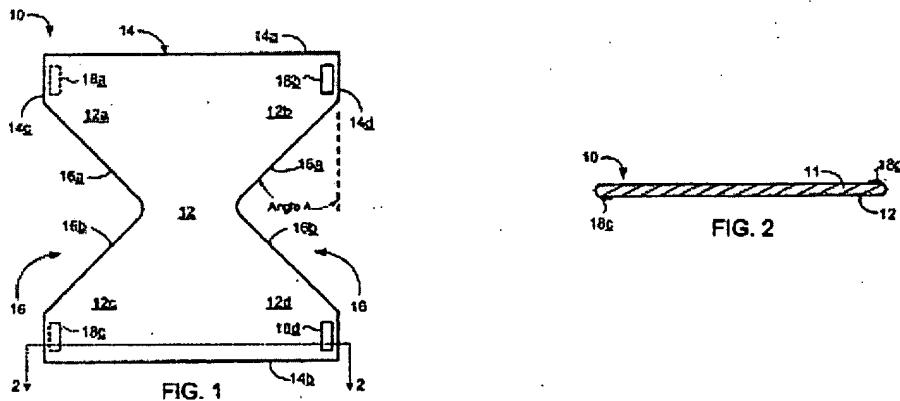
REMARKS

The following remarks are responsive to the non-final Office action dated September 30, 2004. Claims 1-10 are pending in the application. In the Office action, claims 1-4 and 6-10 were rejected under 35 U.S.C. § 102(e), and claim 5 was rejected under 35 U.S.C. § 103(a). In view of the remarks presented below, Applicant respectfully requests reconsideration of the application under 37 C.F.R. § 1.111 and allowance of all pending claims.

Rejections under 35 USC § 102

Claims 1-4 and 6-10 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sheikh, U.S. Patent No. 6,589,272 (hereinafter "Sheikh"). Applicant respectfully traverses these rejections, and respectfully submits that Sheikh fails to disclose the thermal pack apparatus of independent claim 1.

Claim 1 of the present application recites, in pertinent part, "A thermal pack apparatus, comprising: a shell at least partially filled with a thermal material...." Figures 1 and 2, reproduced below, illustrate shell 12 filled with thermal material 11.



When viewed in combination, figures 1 and 2 illustrate that shell 12 envelopes thermal

material 11. Figure 1 shows shell 12 on a first surface of thermal pack 10. Cross-sectional figure 2 shows that shell 12 continues onto a second, opposing surface of thermal pack 10, so as to circumscribe the thermal material 11 between two surfaces, or layers, of shell. Accordingly, thermal material 11 fills the shell 12 of thermal pack apparatus 10.

Sheikh discloses a thermal pack retention device. As disclosed, the retention device of Sheikh is configured to retain a thermal pack, or cold pack in a desired location on a user's body part. As described in col. 2, lines 23-50, and shown in figure 5 reproduced below, the Sheikh retention device includes a body 60, formed of a resilient sheet material, and at least one hole, sized to retain a cold pack 12 shown in figure 1a.

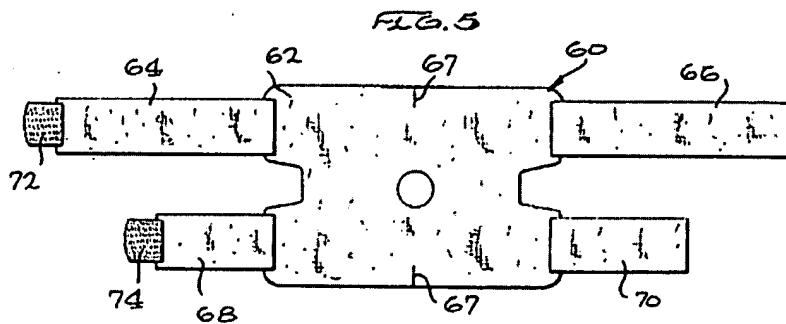
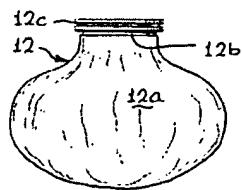


FIG. 1a



The Sheikh retention device body may be molded at seams 67 to form a pocket in which cold pack 12 may be retained, as further discussed at col. 4 lines 44-54.

In contrast to the claims of the present application, Sheikh does not disclose a

thermal pack having a shell at least partially filled with thermal material. The body 60 is not a thermal pack, does not contain the recited thermal material within a shell, and has no thermal therapeutic effect when used independently. The cold source, or other thermal material, used in association with Sheikh's retention device, is contained within a separate cold pack 12. When the retention device is in use, cold pack 12 and the thermal material contained therein is retained in a position between the user's body part and the retention device body 60. As positioned, the disclosed thermal material is entirely outside of the Sheikh retention device body 60. Therefore, Sheikh fails to disclose a shell at least partially filled with a thermal material as recited in claim 1.

For at least the above reason, claim 1 is not anticipated by Sheikh. Therefore, Applicant requests that the rejection of claim 1 under 35 U.S.C. §102(e) be withdrawn. In addition, as claims 2-4 and 6-10 are dependent on claim 1, Applicant requests that the rejection of these claims be withdrawn as well.

Rejections under 35 USC § 103

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheikh in view of Cramer, U.S. Patent No. 6,096,067 (hereinafter "Cramer"). Applicant respectfully traverses this rejection. To establish a *prima facie* case of obviousness, the prior art references must teach or suggest all of the claim limitations. Manual of Patent Examining Procedure § 2143.03, page 2100-133. Claim 5 depends from and includes all of the elements of claim 1, including the claim element of a shell at least partially filled with thermal material.

As discussed above in reference to claim 1, Sheikh fails to disclose, teach, or suggest a thermal apparatus including a shell that is at least partially filled with a thermal material.

Cramer fails to add to the disclosure of Sheikh with respect to these recited elements, and together there is no disclosure, teaching, or suggestion of a shell at least partially filled with a thermal material.

Cramer discloses a thermal body pad including a thermal material which may consist of silica gel. Assuming, *arguendo*, the Examiner's contention that it would be obvious to one skilled in the art to use this silica gel as the thermal agent in Sheikh, such a combination would result in silica gel being used in place of the cold source in the Sheikh's cold pack 12. When in use, the silica gel within the cold pack would be positioned between a user's body part and the retention device. Therefore, as discussed above, the silica gel would be entirely outside of the retention device body 60. The proposed combination does not disclose, teach, or suggest a shell at least partially filled with silica gel. For at least this reason, Applicant respectfully submits that claim 5 is not obvious over Sheikh in view of Cramer, and that claim 5 is in condition for allowance.

Applicant believes that, in view of the above remarks, this application is in condition for allowance. Accordingly, applicant respectfully requests that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.



CERTIFICATE OF MAILING

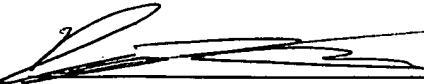
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on December 29, 2004.



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Respectfully submitted,

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